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10/28/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re Application of: Clark et al. | Group Art Unit: 3771 |
| Application No: 10/627,591 Confirmation No: 2973 | Examiner: Douglas, Steven O |
| Filed: July 25, 2003 | Attorney Docket No: 53229-US-CNT[2] (NV.0029.10) |
| Title: AEROSOLIZED ACTIVE AGENT DELIVERY | August 23, 2010 San Francisco, California |

REPLY BRIEF

VIA ELECTRONIC FILING

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Examiner:

In response to the Examiner's Answer mailed on June 23, 2010, the Applicant of the above-referenced patent application (hereinafter Appellant) hereby maintains the appeal to the Board of Patent Appeals and Interferences. Appellant requests the reversal of the Final Rejection.

Certificate of Transmission

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, facsimile transmitted to the U.S. Patent and Trademark Office at (571) 273-8300, or electronically submitted via EFS on the date shown below:

By: 

Melanie Hitchcock

Date: August 23, 2010

Status of Claims

Claims 23-52 are presently pending in the case. Claims 1-22 have been previously cancelled. Claims 33-37 are hereby cancelled. Claims 25 and 27 have been withdrawn from consideration until such time as they depend from an indicated allowable generic claim. Claims 23, 24, 26 and 28-52 have been finally rejected. With claims 33-37 now cancelled, the rejection of each of claims 23, 24, 26 and 28-32 and 38-52 continues to be appealed.

Grounds of Rejection to be Reviewed on Appeal

Appellant continues to request review of the Examiner's following grounds of rejection:

Claims 23, 24, 26, 28-32 and 38-52 having been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 5,735,263 to Rubsamen et al (hereinafter Rubsamen et al).

Argument

Appellant believes each of claims 23, 24, 26, 28-32 and 38-52 is improperly rejected and is therefore allowable for the reasons set forth in Appellant's Appeal Brief filed on May 13, 2009 and Reply Brief mailed on May 13, 2009. The present Reply Brief is being filed to specifically address the new ground of rejection made by the Examiner in the Examiner's Answer mailed on June 23, 2010. The comments herein are merely supplemental to the arguments made in the Appeal Brief and prior Reply Brief and are not meant to replace those arguments.

The new rejection under §112, first paragraph

The Examiner's rejection of claims 33-37 under 35 U.S.C. §112, first paragraph is believed to be moot in view of Appellant's cancellation of claims 33-37. The appeal of the rejection of claims 33-37 is withdrawn.

Conclusion

Thus, it is believed that all rejections made by the Examiner have been addressed and overcome by the above arguments and the arguments provided in the Appeal Brief. Therefore, all pending claims are allowable. A reversal is respectfully requested.

Should there be any questions, Appellant's representative may be reached at the number listed below.

Respectfully submitted,

JANAH & ASSOCIATES

Dated: August 23, 2010

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